
By: **Chairman, Health and Government Operations Committee (By Request
- Departmental - Aging)**

Introduced and read first time: January 22, 2004

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Decisions Act - Appointment of Agent - Prohibition**

3 FOR the purpose of prohibiting certain family members of certain persons from
4 serving as the health care agent for certain individuals receiving health care
5 from a health care facility under certain circumstances; and generally relating
6 to the appointment of a health care agent under the Health Care Decisions Act.

7 BY repealing and reenacting, with amendments,
8 Article - Health - General
9 Section 5-602
10 Annotated Code of Maryland
11 (2000 Replacement Volume and 2003 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article - Health - General**

15 5-602.

16 (a) Any competent individual may, at any time, make a written advance
17 directive regarding the provision of health care to that individual, or the withholding
18 or withdrawal of health care from that individual.

19 (b) (1) IN THIS SUBSECTION, "DISQUALIFIED PERSON" MEANS:

20 (I) AN OWNER, OPERATOR, OR EMPLOYEE OF A HEALTH CARE
21 FACILITY FROM WHICH THE DECLARANT IS RECEIVING HEALTH CARE; OR

22 (II) A SPOUSE, PARENT, CHILD, OR SIBLING OF AN OWNER,
23 OPERATOR, OR EMPLOYEE OF A HEALTH CARE FACILITY FROM WHICH THE
24 DECLARANT IS RECEIVING HEALTH CARE.

1 [(1)] (2) Any competent individual may, at any time, make a written
2 advance directive appointing an agent to make health care decisions for the
3 individual under the circumstances stated in the advance directive.

4 [(2)] (3) [An owner, operator, or employee of a health care facility from
5 which the declarant is receiving health care] A DISQUALIFIED PERSON may not serve
6 as a health care agent unless the person would qualify as a surrogate decision maker
7 under § 5-605(a) of this subtitle.

8 [(3)] (4) An agent appointed under this subtitle has decision making
9 priority over any individuals otherwise authorized under this subtitle to make health
10 care decisions for a declarant.

11 (c) (1) A written advance directive shall be dated, signed by or at the
12 express direction of the declarant, and subscribed by two witnesses.

13 (2) (i) Except as provided in items (ii) and (iii) of this paragraph, any
14 competent individual may serve as a witness to an advance directive, including an
15 employee of a health care facility or physician caring for the declarant if acting in
16 good faith.

17 (ii) The health care agent of the declarant may not serve as a
18 witness.

19 (iii) At least one of the witnesses must be an individual who is not
20 knowingly entitled to any portion of the estate of the declarant or knowingly entitled
21 to any financial benefit by reason of the death of the declarant.

22 (d) (1) Any competent individual may make an oral advance directive to
23 authorize the providing, withholding, or withdrawing of any life-sustaining
24 procedure or to appoint an agent to make health care decisions for the individual.

25 (2) An oral advance directive shall have the same effect as a written
26 advance directive if made in the presence of the attending physician and one witness
27 and if the substance of the oral advance directive is documented as part of the
28 individual's medical record. The documentation shall be dated and signed by the
29 attending physician and the witness.

30 (e) (1) Unless otherwise provided in the document, an advance directive
31 shall become effective when the declarant's attending physician and a second
32 physician certify in writing that the patient is incapable of making an informed
33 decision.

34 (2) If a patient is unconscious, or unable to communicate by any means,
35 the certification of a second physician is not required under paragraph (1) of this
36 subsection.

37 (f) (1) It shall be the responsibility of the declarant to notify the attending
38 physician that an advance directive has been made. In the event the declarant

1 becomes comatose, incompetent, or otherwise incapable of communication, any other
2 person may notify the physician of the existence of an advance directive.

3 (2) An attending physician who is notified of the existence of the advance
4 directive shall promptly:

5 (i) If the advance directive is written, make the advance directive
6 or a copy of the advance directive a part of the declarant's medical records; or

7 (ii) If the advance directive is oral, make the substance of the
8 advance directive, including the date the advance directive was made and the name of
9 the attending physician, a part of the declarant's medical records.

10 (g) It shall be the responsibility of the declarant to notify a health care agent
11 that the agent has been named in an advance directive to act on the declarant's
12 behalf.

13 (h) Unless otherwise provided in the patient's advance directive, a patient's
14 agent shall act in accordance with the provisions of § 5-605(c) of this subtitle.

15 (i) The absence of an advance directive creates no presumption as to the
16 patient's intent to consent to or refuse life-sustaining procedures.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
18 effect October 1, 2004.